

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

UNITED STATES OF AMERICA)	
)	
v.)	1:05-cv-78/1:99-cr-51
)	<i>Collier</i>
MITCHELL OSBORNE)	
)	

MEMORANDUM

The Court has received a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 from Mitchell Osborne (“Osborne”). Osborne challenges his February 2000 conviction for knowingly and intentionally distributing cocaine base (“crack”), a schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). Osborne contends the judgment entered against him was based on an unconstitutional statute, and he is actually innocent (Court File No. 1).

Upon review of the record for Osborne’s conviction and sentence, the Court realized this is Osborne’s second § 2255 motion challenging his February 2000 conviction and sentence. His first § 2255 motion alleged ineffective assistance of counsel and was dismissed. *United States v. Mitchell Osborne*, Civil Action No. 1:02-cv-324 (E.D. Tenn. 2003).

In accordance with the “Antiterrorism and Effective Death Penalty Act of 1996,” effective April 24, 1996, Osborne cannot file a second or successive § 2255 motion in the district court until he has moved in the United States Court of Appeals for the Sixth Circuit for an order authorizing the district court to consider the motion. This Court has not received an order from the Sixth Circuit authorizing the Court to consider the pending motion.

Accordingly, the Clerk will be **DIRECTED** to **TRANSFER** this action to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631. *See Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997). Additionally, the Court will **STRIKE** its order requiring the Government to respond to Defendant's motion (Court File No. 3).

An order will enter.

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE